

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Privasafe	)	
	)	
	)	
	)	IC No.: 05-S0206797
Complaint Regarding	)	
Unauthorized Change of Subscriber's	)	CC Docket: 94-129
Telecommunications Carrier	)	

**PRIVASAFE'S PETITION FOR RECONSIDERATION**

By and through the instant petition, Privasafe ("Privasafe") respectfully seeks reconsideration of the Federal Communications Commission (the "Commission") Order adopted January 29, 2006 and released January 31, 2006 (the "Order") in the above-referenced matter. In the Order, the Commission determined that Privasafe changed Mr. Terry Burton's (the "Complainant") telecommunications service provider without obtaining his authorization and verification in violation of 47 C.F.R. §§ 64.1100-64-1190. Further, the Commission granted the relief sought in Complainant's complaint (the "Complaint") holding that Privasafe's actions resulted in an unauthorized change to Complainant's telecommunications service provider. The Commission's Order should be reconsidered because: 1) Privasafe is merely an enhanced service provider that charges its services which include, but are not limited to, Internet access, e-mail, voicemail and software services (collectively, the "Services"), to its customers' local exchange carrier ("LEC") telephone bills and Privasafe has neither the requisite license, nor the ability, to change the

Complainant's telecommunications service provider; and 2) a careful reading of the Complainant's January, February, March and April 2005 SBC Communications, Inc. ("SBC") LEC telephone bills (the "Bills"), which are annexed to the Complaint, demonstrate that the Complainant was mistaken in alleging that his telephone service provider had been changed by Privasafe when, in fact, only Privasafe-related enhanced service charges had been placed on his Bills.

### **BACKGROUND**

On December 22, 2005, the Complainant filed a Complaint with the Commission against Privasafe. The Complaint alleged that Privasafe engaged in "slamming" by switching Complainant's long distance carrier without his permission. OAN Services, Inc. ("OAN") serves as Privasafe's LEC billing processor for each Privasafe Service account that is purchased and charged to a consumer's LEC telephone bill. According to the Bills annexed to the Complaint, SBC Communications, Inc. ("SBC") serves as Complainant's long distance provider.

### **PROCEDURAL HISTORY**

The Commission notified Privasafe of the Complaint through correspondence dated December 22, 2005. On January 6, 2006, Privasafe properly and timely responded to the Complaint (the "Response").

Complainant's Privasafe account was cancelled prior to the adoption and release of the Commission's Order. Specifically, on or about February 16, 2005, the Privasafe account associated with Complainant's telephone number was canceled for the purpose of addressing the Complaint. On the same day, Privasafe processed

a credit to the Complainant's SBC LEC telephone Bill in the amount of Forty-Four Dollars and Eighty-Five cents (\$44.85), plus tax, for all sums that had been previously billed to Complainant's telephone account. Notwithstanding the foregoing, Privasafe, upon further review of the matter, determined that it was possible that the Complainant may not have received the credit. After making an inquiry into the circumstances surrounding the credit, Privasafe has been unable to determine why the Complainant may not have received the credit and whether or not such error, if it occurred, was the result of an act or omission on the part of the billing company or LEC. As such, on or about June 21, 2005, Privasafe mailed a check in the amount of Forty-Four Dollars and Eighty-Five cents (\$44.85) to the Complainant, representing the entire amount previously billed to the telephone account of the Complainant. Privasafe's records indicate that the refund check was deposited on July 5, 2005. Privasafe has adjusted its records and the Complainant will not receive any further charges or demands for payment.

### **ARGUMENT**

**I. Privasafe Is An Enhanced Service Provider That Charges Its Services To Customer LEC Telephone Bills. Privasafe Has Neither The Requisite License, Nor The Ability, To Change The Complainant's Telecommunications Service Provider.**

Privasafe is an enhanced service provider that offers enhanced Services that are charged to customer LEC telephone bills upon receipt of the applicable customer's express consent. At no time has Privasafe attempted to switch any consumer's long distance service, nor does Privasafe have the requisite license or ability to perform such an act.

Section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, makes it unlawful for any **telecommunications carrier** to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe." (emphasis added). Privasafe is not a telecommunications carrier, a reseller of telecommunications services or an agent for a telecommunications carrier. Privasafe is not engaged in the business of providing any interstate telecommunications services whatsoever. Privasafe simply provides potential consumers with the ability to purchase its enhanced Services via the Internet. For every purchase of its enhanced Services, the Privasafe customer submits his/her registration information to Privasafe and expressly consents to incur a one-time set up fee and associated recurring charges to his/her applicable LEC telephone bill. Accordingly, Privasafe cannot and has not "slammed" Complainant.

**II. It Appears That The Complaint Was Mistaken In Alleging That Privasafe Was Responsible For Placing SBC Long Distance Telephone Charges On The Bills.**

Complainant was mistaken when he alleged that Privasafe was responsible for placing SBC long distance telephone charges on his LEC telephone Bills. It is reasonable to infer that when Complainant reviewed his LEC telephone Bills and observed that he had incurred "Privasafe" charges and/or enhanced Service charges from OAN, he erroneously assumed that Privasafe and/or OAN was now his long distance carrier and had become so without his authorization and verification.

Alternatively, Complainant may have misunderstood Privasafe to be SBC's agent. Please note that the Bills clearly indicate that the Complainant's Privasafe Services are not long distance telephone services. As such, the Complainant was simply mistaken when he alleged that Privasafe was responsible for the placement of SBC long distance service charges on his SBC telephone bills. As such, Complainant was not "slammed."

Based upon the foregoing, Privasafe respectfully requests that the Commission reconsider its Order and find that Privasafe did not "slam" Complainant.

Respectfully submitted,

/s/ Jonathan E. Turco

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